

Appeal from decision of Idaho State Office, Bureau of Land Management, denying protest of elimination of inventory units from further consideration as wilderness study areas. ID-111-5, ID-111-19B, and ID-111-20B.

Affirmed in part; set aside and remanded in part.

1. Federal Land Policy and Management Act of 1976: Wilderness-- Wilderness Act

Although boundaries of wilderness inventory units are ordinarily located along roads or other substantially noticeable imprints of man, configuration of the unit may justify adjustment of the unit boundary on the basis of the outstanding opportunity criteria in certain circumstances. A decision subdividing a unit into three subunits on this basis will be set aside and the case remanded for further consideration where the record fails to reflect analysis of the basis for subdivision.

2. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

Evaluations made by BLM personnel in the wilderness inventory process are necessarily subjective and judgmental. The conclusions reached must be accorded considerable deference notwithstanding that the result might be one over which reasonable men could differ. An appellant seeking reversal must ordinarily show either a clear error of law or a demonstrable error of fact.

APPEARANCES: Timothy O. Kesinger, pro se; Barbara Berschler, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE GRANT

Timothy O. Kesinger has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated February 12, 1981, denying his protest of the elimination of three inventory units from further consideration for designation as wilderness study areas (WSA's), pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976).

On November 14, 1980, the BLM State Office published its final intensive wilderness inventory decision in the Federal Register, in part eliminating 30,742 acres in unit ID-111-5 (Poison Gulch); 33,150 acres in unit ID-111-19B (Bull Gulch); and 17,787 acres in unit ID-111-20B (Upper Battle Creek) from consideration as WSA's. 45 FR 75586 (Nov. 14, 1980).

Section 603(a) of FLPMA, directs the Secretary to review roadless areas of 5,000 acres or more, which are identified during the inventory required by section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (1976), as having the wilderness characteristics described in the Wilderness Act of 1964, 16 U.S.C. § 1131 (1976), for possible inclusion in the wilderness system. The Secretary is then directed to report to the President his recommendations as to the suitability or unsuitability of each such area for preservation as wilderness. After recommendations by the President, Congress will make the final wilderness area designation decisions. 43 U.S.C. § 1782(b) (1976).

BLM divided the wilderness identification and review process into three phases: Inventory, study, and reporting. BLM's decision to eliminate the three units from further consideration as WSA's marks the end of the inventory phase and the beginning of the study phase.

For the sake of clarity, we will address each of the three units separately. 1/

Poison Gulch (ID-111-5)

This unit was eliminated from further consideration as a WSA because it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation.

In its Wilderness Intensive Inventory, at page 2, BLM stated that the combination of roads and intruding State land "create two narrow land necks which in effect divide the unit into 3 subunits." BLM concluded that the western subunit lacks outstanding opportunities for solitude because of its "relatively small size" (10,000 acres), its "generally poor configuration,"

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1/ In his statement of reasons for appeal, appellant notes certain errors which BLM allegedly committed during the intensive wilderness inventory in interpreting and applying internal BLM guidelines (set forth in Organic Act Directives and the Wilderness Inventory Handbook). Although appellant states that these errors affected the inventory of other units, appellant's protest was limited to units ID-111-5, ID-111-19B, and ID-111-20B. The scope of our review on appeal is, therefore, properly confined to those three units.

inadequate vegetative and topographic screening, and the "corridor effect at its core." *Id.* at 3. In particular, BLM noted the "topographic layout" of the subunit, i.e., "rugged mountainous terrain," with "numerous draws running perpendicular to Birch Creek." BLM concluded that the topography of the unit

tends to draw visitors into a narrow corridor of use along Birch Creek and increase the potential of visitor contacts. The relatively straight, open character of the canyon would enhance this corridor effect. In addition, much of the Birch Creek canyon area, where opportunities for solitude would be greatest, is in state ownership. Outside the Birch Creek canyon, the unit is generally confined to narrow land fingers where opportunities for solitude are minimal.

Id. In his protest, appellant argued that outstanding opportunities for solitude are available west of Birch Creek in the 54 "hills, peaks, and buttes [that rise] \* \* \* above the general ridge elevations" and in the 26 tributaries of Birch Creek, by virtue of their "deep and winding character." BLM responded to the latter claim in its February 1981 decision at page 3: "While recreationists could achieve solitude by entering the canyon's tributaries as suggested by the protest, there is no attraction in the steep tributaries that would draw them away from the central corridor." Furthermore, BLM concluded that appellant had failed to address the issue of "corridor effect" and stated: "In this subunit, the strong corridor effect along Birch Creek must be mitigated if opportunities for solitude are to be considered outstanding." Id.

BLM concluded that the central subunit lacks outstanding opportunities for solitude because of its "relatively small size" (9,600 acres), its "narrow configuration," the "relatively short lengths" of the draws, and the "lack of significant vegetative screening" (Wilderness Intensive Inventory at 3). BLM described the subunit as comprised of "a long series of ridges running north-south throughout the length of the subunit," with "numerous draws." *Id.* The draws offer "varying amounts of topographic screening depending upon their depth and steepness of gradient." *Id.* In his protest, appellant argued that outstanding opportunities for solitude are available in the 73 hills, peaks, and buttes that rise above the eastern ridge line, the 1- to 2-mile width of the eastern ridge, the bases of the peaks, and the tributaries of Birch Creek. BLM responded to this claim in its February 1981 decision at page 3: "[W]hile a recreationist could achieve solitude by seeking out a particular zone where screening is available, the ability to consciously hide from other visitors is not an outstanding opportunity for solitude."

BLM concluded that the eastern subunit lacks outstanding opportunities for solitude because of its "relatively small size" (9,000 acres), its "poor configuration," and inadequate vegetative and topographic screening (Wilderness Intensive Inventory at 3). BLM described the subunit as comprised of "a rolling to steep hilly region dissected by numerous shallow drainages." *Id.* In his protest, appellant noted that the subunit is "dominated by the portion of the Rough Mtns.' ridge, which lies between Poison Gulch and Poison Creek," and argued that outstanding opportunities for solitude are available in the 81 hills, peaks, and buttes that rise above the ridge line and in six

"steepsided" streams that "meander far up into the ridge." BLM responded to this claim in its February 1981 decision at page 3: "In this subunit, despite the amount of topographic relief, the screening potential of the topography is minimized by the topography layout (open character of the terrain)."

Appellant raises two major issues in his statement of reasons for appeal. First, he contends that the unit is improperly subdivided into three units for the purpose of evaluation of wilderness characteristics. Further, appellant contends BLM misapplies the criteria for evaluating the unit with respect to the existence of an outstanding opportunity for solitude by failing to recognize that such an opportunity need exist in only part of a unit as opposed to the entire unit.

[1] As we noted in The Wilderness Society, 66 IBLA 287, 293 (1982), the boundaries of a BLM wilderness inventory unit are ordinarily located along roads or other substantially noticeable imprints of man. However, Organic Act Directive (OAD), 78-61, Change 3 (July 12, 1979), at page 3, provides that configuration of a unit may justify adjustment of unit boundaries on the basis of the outstanding opportunity criteria in certain instances:

- (a) When a narrow finger of roadless land extends outside the bulk of the unit;
- (b) When land without wilderness characteristics penetrates the unit in such a manner as to create narrow fingers of the unit (e.g., cherrystem roads closely paralleling each other);
- (c) When extensive inholdings occur and create a very congested and narrow boundary area. These situations are expected to rarely occur, and boundary adjustments in such cases may only be made with State Director approval. Very good judgment will be required in locating boundaries under such conditions so as to exclude only the minimum appropriate land. Such boundary adjustments are not permissible if the land in question possesses an outstanding opportunity for primitive and unconfined recreation. [Emphasis in original.]

The roads cited by BLM as the basis of subdividing the unit do not bisect the unit. Although the map provided in the BLM record is drawn to small scale, it appears that the neck of land separating the western and central subunits is at least 1 mile wide, while the neck separating the eastern and central subunits is about one-fourth of a mile wide. Since the necks of land connecting the subunits do not appear on the basis of the record to contain any imprints of man which would support drawing boundaries between the subunits, it must be assumed that BLM subdivided the unit on the basis of the outstanding opportunity criteria. The record before the Board on appeal from the protest denial does not contain an analysis to sustain the conclusory statement that the intrusions which do not bisect the unit "in effect divide the unit into 3 subunits." Therefore, the decision denying appellant's protest regarding unit ID-111-5 is set aside and the case remanded for consideration, with supporting documentation, of whether the unit is properly subdivided consistent with the criteria outlined in the OAD. Appellant should be served with a copy of the BLM decision on remand.

In the Wilderness Inventory Handbook (WIH), 2/ at page 13, BLM defined an opportunity for solitude as "a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit." The factors to be considered in assessing opportunities for solitude include "size, natural screening, and ability of the user to find a secluded spot." Id. However, as stressed in OAD 78-61, Change 3, at page 4, BLM must consider "the interrelationship between size, screening, configuration, and other factors that influence solitude." (Emphasis added.) Accordingly, opportunities for solitude may be available in a flat and/or unvegetated area which is "relatively large" (WIH at 13). Similarly, opportunities for solitude may be available in a small area "if, due to topography or vegetation, visitors can screen themselves from one another." Id.

The BLM decision states that the existence of "isolated pockets" where opportunities for solitude are available in an area does not render opportunities in that area outstanding (Decision at 2). This is not inconsistent with the principle enunciated in OAD 78-61, Change 3, at page 3, which states: "A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit. Each individual acre of land does not have to meet the outstanding opportunity criterion. Obviously, there must be an outstanding opportunity somewhere in the unit." (Emphasis in original.) The OAD requires only that once an outstanding opportunity is determined to be present, a unit is not to be disqualified on the basis that the opportunity is available "only in a portion of the unit." Id.

Appellant has contested the conclusion of BLM that the unit does not present an outstanding opportunity for solitude. While BLM acknowledged in the decision under appeal that certain elements of topographic screening are available in parts of the unit, BLM found that on balance the elements of size of the unit, lack of vegetative screening, and limited topographic screening combined to create less than an outstanding opportunity for solitude. Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal. Committee for Idaho's High Desert, 62 IBLA 319 (1982). No such ground for modification has been shown with exception of the lack of support in the record on appeal for subdividing the unit into three subunits. Upon remand of the decision denying appellant's protest of this unit, the opportunity for solitude should be further evaluated if it is determined that the facts do not support subdivision of the unit into three subunits in light of variations in size and topographic screening which would result from consolidation of the subunits.

BLM further concluded that the unit lacks outstanding opportunities for a primitive and unconfined type of recreation because of "[t]he relatively small size of each subunit, their relatively uniform character, and

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2/ Bureau of Land Management, U.S. Department of the Interior, Wilderness Inventory Handbook (Sept. 27, 1978).

the lack of any exceptional or unusual natural features and recreational attractions. \* \* \* The mental and physical challenge associated with the recreational opportunities is considered to be moderate" (Wilderness Intensive Inventory at 4). Recreational opportunities include hiking, backpacking, horseback riding, fishing, and hunting.

On appeal, appellant contends that BLM failed to accurately assess opportunities for primitive, unconfined recreation. In particular, appellant argues that BLM failed to consider the "diversity" in the number of recreational opportunities. This is an appropriate consideration. See WIH at 14. However, there is no reason to conclude that BLM did not consider "diversity," inasmuch as it noted the number of recreational opportunities. Appellant also argues that BLM did not properly consider those attributes of the environment conducive to particular recreational opportunities. We disagree. BLM noted, generally, the uniform character of the subunits in terms of "natural features" and "recreational attractions" (Wilderness Intensive Inventory at 4). We cannot conclude that BLM did not properly assess opportunities for primitive, unconfined recreation. Moreover, appellant has not presented persuasive evidence that outstanding opportunities for a primitive and unconfined type of recreation are present. At best, appellant expresses disagreement with BLM's assessment, which is not sufficient to establish error in BLM's decision. Sierra Club, 62 IBLA 367 (1982).

#### Bull Gulch (ID-111-19B)

This unit was eliminated from further consideration as a WSA because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation.

BLM concluded that the unit lacks outstanding opportunities for solitude because of the "overall lack of screening and [the] configuration problem in the southeast portion" of the unit (Wilderness Intensive Inventory at 3). BLM noted the "large" size of the unit (33,150 acres) but described the screening as "minimal \* \* \* due to the lack of topographic relief and [the] dominance of desert shrub vegetation." Id. Topographic relief is described as generally "minimal," except in the southern portion of the unit where it is "gentle." Id. In the southeastern portion of the unit, a road extends 5 miles into the unit, thereby diminishing opportunities for solitude.

In his protest, appellant described the topography of the unit in detail, particularly in the southern portion of the unit, noting numerous shallow and steep, meandering drainages, numerous hills, and the Big Springs Butte, and noted the "large size" of the unit. In addition, appellant referred to the configuration problem of the southeastern portion of the unit as a "minor irregularity." In responding to the protest, BLM stated that while the topographic relief in the southern portion of the unit creates isolated pockets, these are "insufficient to give any portion of the unit outstanding opportunities" (Decision at 2).

In his statement of reasons for appeal, appellant challenges three aspects of the BLM decision regarding solitude. Appellant contends BLM is committing error by refusing to recognize that an outstanding opportunity for solitude need not exist everywhere in a unit; by considering the influence of

an impact outside the unit; and by considering the issue of manageability which is reserved to the study rather than the inventory phase of the wilderness review process.

As noted above, in assessing opportunities for solitude, BLM must consider "the interrelationship between size, screening, configuration, and other factors that influence solitude" (OAD 78-61, Change 3, at 4 (emphasis added)). In the present case, BLM appears to conclude that the size of the unit is offset by the lack of natural screening. The question, as stated in the WIH at page 13, and reiterated in OAD 78-61, Change 3, at pages 3-4, is whether the opportunity to avoid the sights, sounds, and evidence of other people is provided in a "flat, open area," by virtue of the fact that it is "relatively large."

In the present case, BLM has given adequate consideration to this question, as stated in the Boise District Office's evaluation:

It is generally recognized that low vegetation on flat terrain can provide excellent screening if the area involved is sufficiently large. Low vegetation over sufficient distance can provide a blending affect where other visitors or external influences (such as vehicles traveling on boundary roads) can disappear into the landscape.

It would be difficult to argue the fact that most of the Boise District does not provide solitude through a sense of remoteness or vastness because of its wide open terrain. However, the major factor in determining whether the opportunity for solitude in any given unit can be considered outstanding is whether the unit is sufficiently large enough to allow the blending of a realistic amount of visitor use into the landscape. In this area of the district, vegetation is typified as being extremely short and extremely sparse. This vegetative cover requires significantly more distance than is available in this unit to provide adequate blending of a realistic amount of visitors or external influences. Therefore, the opportunities for solitude cannot be considered outstanding.

Appellant has offered no evidence to dispel this conclusion. Appellant does argue on appeal that BLM may not consider "external influences" in assessing opportunities for solitude. This Board has often held that consideration of the impact of outside sights and sounds in terms of their effect on wilderness characteristics within the unit is consistent with BLM guidelines only where "the impact is so extremely imposing that it cannot be ignored" as set forth in OAD 78-61, Change 3, at page 4. See, e.g., Ruskin Lines, 61 IBLA 193 (1982). Although the record does not establish that the impact of the road is so imposing as to justify consideration at the inventory stage, visibility of the road from within the unit may be illustrative of how the lack of vegetative and topographic screening within the unit limits the opportunity for solitude.

Although it is true, as discussed previously, that rejection of an inventory unit as a WSA because there is not an outstanding opportunity for

solitude everywhere within the unit is improper, we are not convinced that BLM has done so. Appellant has not presented persuasive evidence that outstanding opportunities for solitude are present and we can discern no error of law or fact in BLM's assessment. At best, appellant expresses disagreement with BLM's assessment, which is not sufficient to establish error in BLM's decision. Sierra Club, supra.

Further, we are not convinced that BLM has improperly embraced management issues in considering the potential for screening a number of visitors to the unit. Evaluation of solitude requires consideration of factors which influence a person's ability to avoid the sights, sounds, and evidence of other people in the inventory unit (WIH at 13). Thus, the ability of the land to screen simultaneous visitors from each other is relevant.

BLM concluded that the unit lacks outstanding opportunities for a primitive and unconfined type of recreation because of the "lack of exceptional or unusual natural features and recreation attractions" (Wilderness Intensive Inventory at 4). Recreational opportunities inventoried include hiking, backpacking, horseback riding, hunting, photography, and sightseeing for zoological features.

On appeal, appellant again contends that BLM failed to accurately assess opportunities for primitive, unconfined recreation, in that it failed to consider the "diversity" in the number of recreational opportunities and to properly consider environmental attributes conducive to such opportunities. We disagree. It is apparent that BLM noted the number of recreational opportunities and there is no reason to conclude that it did not consider the "diversity" of opportunities. Moreover, BLM noted generally the character of the unit in terms of "lack of exceptional or unusual natural features and recreation attractions" (Wilderness Intensive Inventory at 4). Appellant has not established any fundamental error in BLM's judgment that the area does not present an outstanding opportunity for primitive and unconfined recreation. At best, appellant expresses disagreement with BLM's assessment, which is not sufficient to establish error in BLM's decision. Sierra Club, supra.

#### Upper Battle Creek (ID-111-20B)

This unit was eliminated from further consideration as a WSA because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation.

BLM concluded that the unit lacks outstanding opportunities for solitude because of "poor screening," despite the "moderate size" of the unit (17,787 acres) (Wilderness Intensive Inventory at 3). Topographic screening is "poor," except in the lower 4 miles of Battle Creek, and the dominant desert shrub vegetation provides "minimal screening." Id. In addition, the configuration of the unit is "relatively good," except for the 4,000-acre northeastern "finger" of the unit. Id.

In his protest, appellant notes the numerous opportunities for solitude available in Battle Creek and Big Springs Creek and their tributaries, the 15 to 20 miles of canyons with walls rising up 300 feet, the eight hills,



and the many rims. In responding to the protest, BLM stated that opportunities for solitude within the canyons cannot be considered outstanding because of their "shallow depth," the lack of "tall riparian vegetation" and the lack of "sufficient topographic screening" (Decision at 2). BLM noted the "frequent bends" in the canyons, but concluded that they are not "tightly meandered." *Id.* Finally, BLM stated that visitors would tend to congregate in the more scenic portions of the canyons, in this case a "relatively short portion of Battle Creek." *Id.* In this area, "the number of visitors which could be accommodated is very limited." *Id.*

On appeal, appellant has raised issues similar to those discussed in connection with the other units regarding the manner in which BLM assessed opportunities for solitude. After a careful review of his statement of reasons, however, we conclude that appellant has not identified any substantial departure from established BLM policy or Departmental precedent. In particular, appellant argues that BLM gave inadequate consideration to the lower 4 miles of Battle Creek. This is refuted by BLM's response to appellant's protest. Furthermore, appellant argues that the attractiveness of this portion of Battle Creek would draw visitors away from other areas of the unit, thereby providing outstanding opportunities for solitude in those areas. However, we cannot equate the relative unattractiveness of the other areas with outstanding opportunities. BLM must consider a number of factors, as set forth above, including size, screening, and configuration. In this case, the record indicates that BLM properly applied these factors. Moreover, appellant has not presented any persuasive evidence that outstanding opportunities for solitude are present. At best, appellant expresses disagreement with BLM's assessment, which is not sufficient to establish error in BLM's decision. Sierra Club, supra.

BLM concluded that the unit lacks outstanding opportunities for a primitive and unconfined type of recreation because of "the lack of unusual or exceptional natural features and recreation attractions" (Wilderness Intensive Inventory at 4). Recreational opportunities inventoried include hiking, backpacking, horseback riding, hunting, photography, and sightseeing for zoological features.

On appeal, appellant again contends that BLM failed to accurately assess opportunities for primitive, unconfined recreation, in that it failed to consider the "diversity" in the number of recreational opportunities and to properly consider environmental attributes conducive to such opportunities. Appellant has not sustained his burden on appeal. It is apparent that BLM noted the number of recreational opportunities and there is no reason to conclude that it did not consider the "diversity" of opportunities presented. Appellant has not presented any persuasive evidence that outstanding opportunities for a primitive and unconfined type of recreation are present. Rather, appellant expresses disagreement with BLM's assessment, which is not sufficient to establish error in BLM's decision. Sierra Club, supra.

[2] This Board has traditionally accorded considerable deference to the technical expertise of Departmental officers in our review of wilderness cases. As we noted in Richard J. Leaumont, 54 IBLA 242, 245, 88 I.D. 490, 491 (1981):

These evaluations are necessarily subjective and judgmental. BLM's efforts are guided by established procedures and criteria, and are conducted by teams of experienced personnel who are often specialists in their respective areas of inquiry. Their findings are subjected to higher-level review before they are approved and adopted. Considerable deference must be accorded the conclusions reached by such a process, notwithstanding that such conclusions might reach a result over which reasonable men could differ.

Therefore, for an appellant to succeed on appeal, it is not enough to express disagreement with BLM's actions. An appellant seeking reversal of a decision to include or exclude land from a WSA must show that the decision below was premised either on a clear error of law or a demonstrable error of fact. Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981); Richard J. Leaumont, *supra*. Appellant has not done so in this instance except as noted above in the discussion for unit ID-111-5. BLM properly denied appellant's protest. Committee for Idaho's High Desert, *supra*.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to units ID-111-19B and ID-111-20B and set aside and remanded as to unit ID-111-5.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

Edward W. Stuebing,  
Administrative Judge.

